

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

GREG FLORES, BRIAN FLORES, SUSAN F.
HAMILTON, DONALD FLORES, JR., and
MARK FLORES

Plaintiffs,

v.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

No.: 1:08-CV-471-LTS-RHW

**STATE FARM FIRE AND CASUALTY COMPANY'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

State Farm Fire and Casualty Company ("State Farm") respectfully moves for partial summary judgment pursuant to Federal Rule of Civil Procedure 56 as to Plaintiffs' claims for punitive damages, extra-contractual damages, and attorney's fees. (Compl. ¶¶ 10-14, 20-25.) State Farm is entitled to judgment as a matter of law on these claims for the following reasons, as set forth more fully in the accompanying Memorandum of Law, incorporated herein by reference:

1. Plaintiffs cannot obtain punitive damages because they cannot satisfy their heavy burden of proof to meet the substantive requirements for punitive damages under Mississippi law. Specifically, Plaintiffs cannot demonstrate by clear and convincing evidence (i) that State Farm had no arguable or legitimate basis for adjusting the claim or (ii) that State Farm acted with malice or gross negligence in reckless disregard for Plaintiffs' rights.
2. Plaintiffs' inability to show that State Farm had no arguable basis for adjusting their claim also bars their claims for extra-contractual damages, including emotional distress.
3. Plaintiffs cannot recover any attorney fees because, absent an award of punitive damages, Mississippi law does not permit an award of attorney fees or trial expenses as extra-contractual damages.

4. State Farm attaches the following exhibits to this Motion and incorporates them by reference:

- Exhibit A: Homeowners Claim File;
- Exhibit B: Deposition of Greg Flores;
- Exhibit C: Expert Report of W. Mark Watson, P.E., SECB;
- Exhibit D: Plaintiffs' Homeowners Insurance Policy;
- Exhibit E: Expert Report of Forrest James Masters, Ph.D. dated November 27, 2009;
- Exhibit F: Deposition of Mark Flores;
- Exhibit G: Deposition of Sharonna Miller;
- Exhibit H: Deposition of Heather Keyt;
- Exhibit I: Expert Report of Robert W. Weisberg, Ph.D. dated April 12, 2009;
- Exhibit J: Resume of W. Mark Watson;
- Exhibit K: Letter to Plaintiffs' counsel, John H. Deneana from State Farm's counsel, James H. Heidelberg, dated March 29, 2010;
- Exhibit L: Expert Report of Robert W. Weisberg, Ph.D. dated August 29, 2009.

WHEREFORE, the Court should enter partial summary judgment in favor of State Farm, dismissing with prejudice Plaintiffs' claims for punitive damages, extra-contractual damages, and attorney's fees. (Compl. ¶¶ 10-14, 20-25.)

Dated: April 15, 2010

Respectfully submitted,

/s/ James H. Heidelberg

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CERTIFICATE OF SERVICE

I, **JAMES H. HEIDELBERG**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have on this date electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to the following counsel of record:

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DATED, April 15, 2010.

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